

1 Laura Each Nguyen, SBN 203141
2 Law Offices of Laura D. Each, PC
3 5776 Lindero Canyon Rd., D-233
4 Westlake Village, CA 91362
5 Telephone: (818) 665-4083
6 Fax: (818) 206-3230

7 Attorney for Plaintiff
8 TRICOR AMERICA, INC.

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 TRICOR AMERICA, INC., a California
12 corporation,

13 Plaintiffs,

14 vs.

15 DHL CANADA EXPRESS, LTD. a Canadian
16 corporation; LOOMIS CANADA HOLDING
17 COMPANY, INC., a Canadian corporation; and
18 DOES 1 through 25, inclusive.

19 Defendants.

Case No.: C07 4949 CRB

DECLARATION OF RICK CRUZ
IN SUPPORT MOTION FOR
SUMMARY JUDGMENT AND IN
THE ALTERNATIVE MOTION
FOR SUMMARY
ADJUDICATION;
MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF

Date: June 27, 2008

Time: 10:00 a.m.

Courtroom: 9

[Declarations of Laura Each
Nguyen, Andy Sun, Scott Tanaka, and
John Marticio; Notice of Motion and
Motion for Summary Judgment;
Statement of Uncontroverted Facts
and Conclusions of Law filed
concurrently herewith]

1
2 I, Rick Cruz, hereby declare as follows:

3 1. I am a citizen of the United States and am over eighteen years of age
4 and I could and would testify as to the following matters of my own personal
5 knowledge.

6 2. I am an employee of Tricor America and my job title is Regional
7 Manager. My job responsibilities include overseeing all aspects of the operations
8 of Tricor's Pacific Northwest operations.

9 3. Tricor America, Inc. is a California corporation engaged in the
10 business of transporting packages throughout the United States.

11 4. Loomis is a Canadian company engaged in the business of
12 transporting packages throughout Canada.

13 5. DHL Canada is a Canadian company engaged in the business of
14 transporting packages throughout Canada.

15 6. In or about 1984, Tricor America, Inc. and Loomis Courier entered
16 into an agreement to provide courier services to each other at specified rates. The
17 agreement did not have any specific term and could be terminated by either party
18 at any time.

19 7. Tricor and Loomis performed services for one another pursuant to this
20 agreement for more than twenty years.

21 8. In or about 2004, Loomis was acquired by DHL.

22 9. Once Loomis was acquired by DHL, DHL raised its rates on Tricor
23 for the work performed by Loomis.

24 10. Initially, the rate increases were instituted without any prior notice
25 and Tricor learned of the rate increases when it received the invoices.

26 11. Tricor disputed the initial rate increases and contacted Ben Fan,
27 Tricor's contact at DHL/Loomis. Ben Fan advised Tricor that the invoices were
28 incorrect and instructed Tricor to short pay the invoices.

12. Tricor followed Ben Fan's instructions and short-paid the invoices.

13. In July 2006, Defendants sent a notice of rate increase to Tricor's Seattle office. This notice of rate increase increased rates drastically. A true and correct copy of the notice of rate increase is attached as Exhibit "A."

14. In November 2006, Tricor terminated all services performed by Defendants on behalf of Tricor and contracted with another courier company to perform its work in Canada.

15. Tricor did not request any service from Defendants after November 2006.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 19 day of May 2008.


RICK CRUZ

EXHIBIT A



DHL Express
5499 Regent Street
Burnaby, B.C.
V5C 6C8

B6PAI8R00003

Monday, July 17, 2006

Tricor America
2355 - 200 Street South
Seattle, Washington
Canada 98198

Domestic Acct(s): ER6692

International Acct(s): 976382807

Import Account(s):

DHL Shipper

DHL Canada takes pride in offering customers world-class service at a competitive price. With your current rates expiring the enclosed rate structure will take effect the week of **July 24th 2006**.

Please refer to www.dhl.com and our *Points Guide* for our latest *beyond and interline charges* based on postal code. For first time users of our *Import Express* service an account activation request from the customer is required prior to shipping.

DHL Canada greatly values your business and appreciates the opportunity to continue serving you. Should you have any questions, or wish to discuss increasing your present shipping volumes with DHL please contact your Account Executive as indicated below

Regards,


Bill Mason
Inside Account Executive
DHL Express Canada Ltd.
p:604-606-4528
Bill.Mason@dhl.com
www.dhl.com



US & INTERNATIONAL EXPRESS RATES

FROM: CANADA

TO:	ENV.		PARCEL / DOCUMENT		
	0 lbs - .9 lbs	1 lbs - 2 lbs	2.1 lbs + (per lb)		
021	\$ 23.66	\$ 31.06	\$ 3.07		
022	\$ 41.95	\$ 64.53	\$ 6.25		
041	\$ 39.09	\$ 58.55	\$ 5.72		
042	\$ 73.99	\$ 90.68	\$ 11.34		
051	\$ 41.69	\$ 66.50	\$ 6.88		
062	\$ 57.30	\$ 94.34	\$ 11.25		
071	\$ 39.01	\$ 69.62	\$ 9.73		
081	\$ 39.01	\$ 77.65	\$ 8.35		
092	\$ 57.30	\$ 99.78	\$ 11.25		
093	\$ 73.90	\$ 101.03	\$ 11.34		



110102326-3-1002828914

DHL International Services

A1010/04/06/01/01/01/01

See below for International Outbound rates. On the back cover, find the country you are shipping to and its corresponding rate zone. Then match the rate zone to the corresponding field on this page.

Georgia	E
Germany	C
Ghana	A

EUROPE		
C	D	E
\$27.30	\$34.50	\$70.70
\$40.32	\$43.24	\$84.11
\$47.01	\$52.44	\$101.46

U.S. INTERNATIONAL OUTBOUND RATES

ZONE	CANADA	MEXICO	EUROPE					ASIA					CARIBBEAN CENTRAL & SOUTH AMERICA			MIDDLE EAST	AFRICA
	A	B	C	D	E	F	G	H1	H2	I	J	K	L	M			
DOCUMENT RATES Rates (lbs.)																	
0.5	\$23.50	\$36.00	\$32.50	\$37.50	\$79.50	\$32.50	\$36.50	\$32.00	\$38.50	\$51.00	\$32.50	\$48.00	\$40.50	\$81.00			
1	\$36.00	\$41.00	\$48.00	\$47.00	\$94.50	\$48.50	\$52.00	\$47.50	\$55.00	\$66.50	\$47.50	\$62.50	\$58.00	\$96.50			
2	\$43.00	\$49.00	\$56.00	\$57.00	\$114.00	\$56.00	\$60.50	\$59.00	\$64.00	\$84.00	\$55.00	\$78.50	\$66.50	\$115.50			
3	\$49.50	\$56.00	\$66.50	\$79.00	\$135.00	\$66.50	\$70.00	\$65.50	\$73.50	\$101.50	\$62.50	\$95.00	\$75.50	\$136.50			
4	\$53.00	\$61.00	\$73.50	\$86.50	\$153.00	\$73.50	\$78.00	\$74.50	\$82.50	\$119.50	\$70.50	\$112.00	\$85.50	\$153.00			
5	\$56.00	\$68.50	\$84.50	\$95.50	\$171.00	\$84.50	\$87.00	\$83.00	\$91.00	\$137.00	\$79.50	\$128.00	\$95.00	\$173.00			
* For document rates over 5 pounds, please see the package rates section below.																	
PACKAGE RATES Rates (lbs.)																	
1	\$40.00	\$42.00	\$49.00	\$60.00	\$96.50	\$40.50	\$53.00	\$48.50	\$56.00	\$67.50	\$48.50	\$63.50	\$59.00	\$98.50			
2	\$44.00	\$46.50	\$57.00	\$70.00	\$115.00	\$57.00	\$61.50	\$56.00	\$68.00	\$85.00	\$56.00	\$79.50	\$67.50	\$117.50			
3	\$50.50	\$57.00	\$67.50	\$79.50	\$136.50	\$67.50	\$71.00	\$66.50	\$74.50	\$102.50	\$63.50	\$96.00	\$76.50	\$138.50			
4	\$55.00	\$62.00	\$76.50	\$87.00	\$154.00	\$76.50	\$79.00	\$75.50	\$83.50	\$120.50	\$71.50	\$113.00	\$86.50	\$157.00			
5	\$58.00	\$69.50	\$85.50	\$96.00	\$172.00	\$85.50	\$88.00	\$84.00	\$92.00	\$138.00	\$80.50	\$129.00	\$96.00	\$175.00			
10	\$68.00	\$98.00	\$111.50	\$128.50	\$243.00	\$111.50	\$129.00	\$109.50	\$137.00	\$219.50	\$109.50	\$206.00	\$141.50	\$247.50			
20	\$99.50	\$131.50	\$159.00	\$190.00	\$388.00	\$159.00	\$201.50	\$156.50	\$212.00	\$392.50	\$165.00	\$330.50	\$220.50	\$395.50			
30	\$129.00	\$160.00	\$203.00	\$241.50	\$530.00	\$203.00	\$269.50	\$200.00	\$279.00	\$456.50	\$216.00	\$428.00	\$290.00	\$530.00			
40	\$154.00	\$189.00	\$247.00	\$291.50	\$638.50	\$247.00	\$328.00	\$213.00	\$345.00	\$547.50	\$263.00	\$513.50	\$357.00	\$651.00			
50	\$176.50	\$211.50	\$288.00	\$342.00	\$739.00	\$288.00	\$391.00	\$283.50	\$411.00	\$637.50	\$314.00	\$597.50	\$425.00	\$753.50			
60	\$197.50	\$234.00	\$333.00	\$398.50	\$840.00	\$333.00	\$452.50	\$328.00	\$475.50	\$728.00	\$361.50	\$682.50	\$494.50	\$856.50			
70	\$214.50	\$254.50	\$378.00	\$450.50	\$940.50	\$378.00	\$511.50	\$372.50	\$537.50	\$817.50	\$409.00	\$766.50	\$562.50	\$959.00			
80	\$228.50	\$275.00	\$423.50	\$502.50	\$1,041.00	\$423.50	\$569.00	\$419.00	\$598.00	\$904.50	\$452.50	\$848.00	\$632.50	\$1,061.50			
90	\$246.00	\$287.00	\$456.00	\$551.50	\$1,142.00	\$456.00	\$611.00	\$449.00	\$637.00	\$994.00	\$496.00	\$909.00	\$702.00	\$1,164.00			
100	\$267.50	\$295.50	\$495.00	\$592.00	\$1,241.50	\$495.00	\$660.00	\$486.50	\$698.00	\$1,092.00	\$539.50	\$999.00	\$769.00	\$1,265.50			
110	\$283.50	\$322.50	\$542.00	\$651.00	\$1,365.50	\$542.00	\$722.50	\$535.00	\$770.50	\$1,192.00	\$597.50	\$1,093.00	\$833.50	\$1,392.00			
120	\$309.00	\$362.00	\$591.00	\$710.00	\$1,489.50	\$591.00	\$788.00	\$584.00	\$850.00	\$1,292.00	\$651.50	\$1,197.00	\$909.50	\$1,518.50			
130	\$343.50	\$387.00	\$650.00	\$769.50	\$1,613.50	\$642.00	\$867.00	\$633.50	\$921.00	\$1,392.00	\$720.50	\$1,293.50	\$999.50	\$1,645.00			
140	\$370.00	\$416.50	\$700.00	\$828.50	\$1,738.00	\$691.50	\$934.00	\$681.00	\$992.00	\$1,492.50	\$776.00	\$1,398.00	\$1,075.50	\$1,771.50			
150	\$396.50	\$446.50	\$750.00	\$887.50	\$1,862.00	\$741.00	\$1,000.50	\$730.00	\$1,062.50	\$1,592.50	\$831.00	\$1,493.00	\$1,153.00	\$1,898.00			
RATE PER POUND																	
**151+	\$2.70	\$3.00	\$5.05	\$5.92	\$12.41	\$4.94	\$6.74	\$4.86	\$7.08	\$10.02	\$5.54	\$9.68	\$7.69	\$12.65			

U.S. INTERNATIONAL INBOUND RATES

ZONE	CANADA	MEXICO	EUROPE			ASIA					CARIBBEAN CENTRAL & SOUTH AMERICA			MIDDLE EAST	AFRICA
	A	B	C	D	E	F	G	H1	H2	I	J	K	L	M	
DOCUMENT RATES															
Rates (Lbs.)															
0.5	\$38.00	\$43.50	\$50.50	\$53.00	\$104.50	\$51.00	\$55.00	\$50.00	\$58.00	\$73.50	\$52.50	\$69.00	\$64.00	\$106.50	
1.0	\$45.50	\$48.00	\$59.00	\$64.00	\$126.00	\$59.00	\$64.00	\$58.00	\$67.50	\$93.00	\$61.00	\$86.50	\$73.50	\$127.50	
1.5	\$52.50	\$59.00	\$70.00	\$87.00	\$149.00	\$70.00	\$74.00	\$69.00	\$77.50	\$112.00	\$69.00	\$105.00	\$85.50	\$150.50	
2.0	\$56.00	\$64.50	\$79.50	\$95.50	\$168.50	\$79.50	\$82.00	\$78.50	\$87.00	\$132.00	\$78.00	\$123.50	\$94.50	\$171.00	
2.5	\$59.00	\$72.00	\$89.00	\$105.50	\$188.50	\$89.00	\$91.50	\$87.50	\$96.00	\$151.00	\$88.00	\$141.00	\$105.00	\$191.00	
* For document rates over 2.5 kilos, please see the package rates section below.															
PACKAGE RATES															
Rates (Lbs.)															
1.0	\$16.50	\$19.00	\$20.00	\$27.00	\$127.00	\$60.00	\$65.00	\$59.00	\$68.50	\$94.00	\$62.00	\$87.50	\$74.50	\$129.50	
1.5	\$23.50	\$26.00	\$27.00	\$37.50	\$150.00	\$71.00	\$75.00	\$70.00	\$79.50	\$113.00	\$70.00	\$106.00	\$88.50	\$152.50	
2.0	\$28.00	\$35.50	\$38.50	\$56.00	\$169.50	\$80.50	\$83.00	\$79.50	\$88.00	\$133.00	\$79.00	\$124.50	\$95.50	\$173.00	
2.5	\$31.00	\$37.00	\$40.00	\$60.00	\$189.50	\$90.00	\$91.50	\$88.50	\$97.00	\$152.00	\$89.00	\$142.00	\$106.00	\$193.00	
3.0	\$34.00	\$36.00	\$100.00	\$123.00	\$219.00	\$99.50	\$110.00	\$98.00	\$115.50	\$190.50	\$103.50	\$176.00	\$126.00	\$223.00	
3.5	\$36.50	\$92.00	\$106.50	\$130.00	\$235.50	\$106.50	\$118.50	\$104.50	\$125.00	\$207.50	\$109.50	\$194.50	\$136.00	\$240.00	
4.0	\$39.00	\$98.00	\$112.00	\$137.00	\$251.50	\$112.00	\$122.50	\$110.50	\$134.00	\$224.50	\$116.50	\$210.50	\$146.50	\$256.50	
4.5	\$71.50	\$103.00	\$117.50	\$144.00	\$267.50	\$117.50	\$135.50	\$115.00	\$144.00	\$241.50	\$123.50	\$227.00	\$156.00	\$272.50	
5.0	\$74.50	\$108.00	\$122.00	\$150.00	\$283.50	\$122.00	\$144.00	\$130.00	\$152.50	\$258.50	\$127.50	\$241.50	\$166.00	\$289.00	
10	\$110.50	\$146.50	\$177.00	\$222.50	\$457.50	\$177.00	\$225.50	\$174.00	\$237.00	\$411.00	\$194.50	\$385.50	\$258.00	\$466.00	
20	\$171.50	\$226.50	\$276.50	\$343.50	\$747.00	\$276.50	\$371.50	\$271.50	\$390.50	\$642.00	\$312.00	\$602.00	\$422.50	\$761.50	
30	\$216.50	\$299.00	\$378.00	\$472.50	\$991.00	\$378.00	\$512.50	\$372.50	\$539.00	\$866.00	\$429.50	\$806.50	\$588.00	\$1,010.00	
40	\$258.50	\$360.00	\$474.50	\$595.50	\$1,234.50	\$474.50	\$637.50	\$467.50	\$657.00	\$1,048.50	\$536.50	\$980.50	\$757.00	\$1,258.00	
50	\$298.00	\$439.00	\$569.50	\$716.50	\$1,502.50	\$569.50	\$759.00	\$552.00	\$816.50	\$1,212.50	\$607.50	\$1,136.50	\$917.00	\$1,531.50	
60	\$336.50	\$413.00	\$603.00	\$859.50	\$1,802.50	\$603.00	\$825.00	\$607.50	\$982.00	\$1,455.00	\$680.50	\$1,378.00	\$1,116.50	\$1,868.00	
70	\$429.00	\$483.00	\$811.00	\$1,005.50	\$2,109.00	\$811.00	\$1,082.00	\$789.50	\$1,149.00	\$1,702.00	\$811.50	\$1,612.00	\$1,306.00	\$2,149.50	
75	\$459.50	\$517.50	\$869.00	\$1,077.50	\$2,259.50	\$869.00	\$1,199.50	\$845.50	\$1,231.00	\$1,823.50	\$1,099.00	\$1,727.00	\$1,399.50	\$2,303.00	
RATE PER HALF KILO															
**75.5+	\$3.07	\$3.45	\$5.80	\$7.19	\$15.07	\$5.73	\$7.73	\$5.64	\$8.21	\$12.16	\$6.73	\$11.53	\$9.33	\$15.36	

Rates are effective February 5, 2006. Rates subject to change without notice. Extra charges may apply.

PROOF OF SERVICE BY MAIL

I, Laura Each Nguen, declare as follows:

I am over the age of 18 years, and not a party to or interested in the within entitled action.

I am a principal at the Law Offices of Laura D. Each and my business address is 5776 Lindero Canyon Road, D-233, Westlake Village, CA 91362.

On May 19, 2008, I served by mail the following documents:

DECLARATION OF RICK CRUZ

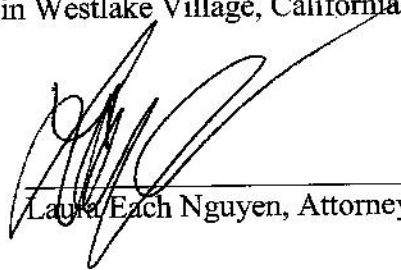
I enclosed a true and correct copy of said document(s), in an envelope via United States Mail, addressed as follows:

Carrie M. Dupic
Robinson & Wood, Inc.
227 North First Street
San Jose, CA 95113

I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. The firm's practice is to deposit mail with the United States Postal Service in Westlake Village, California, on the same day in the ordinary course of business. I sealed said envelope and placed it for collection and mailing on the aforementioned date, following ordinary business practice.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on May 19, 2008, in Westlake Village, California



Laura Each Nguen, Attorney at Law